

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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LINA REISS, ET AL,

Plaintiffs,

-v-

ETHICON INC., ET AL,

Defendants.
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20-cv-4330 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Defendants Ethicon Inc. and Johnson & Johnson move for leave to supplement their previously-filed motion for summary judgment (Dkt. No. 33) to include arguments relating to Plaintiffs' claim for design defect. (Dkt. No. 69.) On February 4, 2019, the MDL court to which this matter was transferred for pretrial purposes, entered an order setting August 14, 2019 as the deadline for the filing of dispositive motions. (Dkt. No. 70, Exh. A.) On May 22, 2020, the MDL court ordered this case transferred to this Court for trial purposes. (Dkt. No. 37.) The MDL court's order noted: "[T]he time to conduct discovery is complete . . . and the parties have had time to file dispositive and *Daubert* motions, responses and replies." (*Id.*) Plaintiff opposes the motion. (Dkt. No. 70.)

Leave to supplement the pending motion for summary judgment is denied. Defendants have not demonstrated any cause for relief from the MDL court's scheduling order. Defendants argue that allowing supplemental dispositive briefing will not impact the schedule and that the case could be resolved in its entirety if summary judgment were granted. But Defendants have not demonstrated why, if those assertions are correct today, they would not also have been correct in 2019 when dispositive motions were due or why Defendants failed to make their motion on the design defect claim at that stage.

As previously discussed, the pending motion for summary judgment (Dkt. No. 33) is DENIED AS MOOT for a different reason. When that motion was filed, Plaintiffs were pursuing certain claims that they have since decided not to pursue. (Dkt. No. 64.) As the parties agreed at the conference held in this case on June 22, 2020, it would serve convenience for the parties and the Court if Defendants filed a new motion for summary judgment that is limited to the arguments previously presented with respect to the claims that are disputed without supplementing those arguments while at the same time eliminating argument on any claims that have since been withdrawn.

A briefing schedule for the new motion for summary judgment will be discussed at the

previously-scheduled July 29, 2020 conference. (*See* Dkt. No. 62.)

The Clerk of Court is respectfully directed to terminate Dkt. Nos. 33 and 69.

SO ORDERED.

Dated: July 5, 2020
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', written over a horizontal line.

LEWIS J. LIMAN
United States District Judge